IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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RICHARD COOEY, ET AL.,	:	
	:	
plaintiffs,	:	HIGHLY CONFIDENTIAL
	:	
vs.	:	Case No. 2:04-CV-1156
	:	
TED STRICKLAND, ET AL.,	:	
	:	
defendants.	:	

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Deposition of RICHARD THEODORE, a witness, called by the plaintiffs under the applicable Ohio Rules of Civil Procedure, taken before Diana L. Hodge, a notary public in and for the State of Ohio, pursuant to notice and stipulations of counsel hereinafter set forth, at the Southern Ohio Correctional Facility, Lucasville, Ohio, commencing on Thursday, August 13, 2009, at 2:37 p.m.

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On behalf of the plaintiffs.

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On behalf of the defendants.

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THURSDAY AFTERNOON SESSION

August 13, 2009

- - -

STIPULATIONS

It is stipulated by and among counsel for the respective parties that the deposition of Richard Theodore, a witness, called by the plaintiffs under the applicable Ohio Rules of Civil Procedure, may be taken at this time in stenotype by the notary; that said deposition may thereafter be transcribed by the notary out of the presence of the witness; that proof of the official character and qualification of the notary is waived; that the examination, reading and signature of the witness to the transcript of his deposition are expressly waived by counsel and the witness; said deposition to have the same force and effect as though signed by the witness.

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RICHARD THEODORE

being by me first duly sworn, as hereinafter certified, deposes and says as follows:

EXAMINATION

By Mr. Bohnert:

Q. Good afternoon, sir.
A. Hi.
Q. My name is Allen Bohnert. I represent one of the plaintiff's in this case, Jonathan Monroe. With me here is Carol Wright who represents another one of the plaintiffs, Jerome Henderson, as well as Randall Porter from the Ohio Public Defender's Office.
A. Okay. All attorneys?
Q. Yes.
A. Okay.
Q. You're in a room full of them.
You are here today to give a deposition. Do you understand that?
A. I do.
Q. Okay. And do you understand that I'm going to be asking you some questions and that your answers are all under oath?
A. Uh-huh. Yes.
Q. I may ask you about your interaction with

some members of the execution team. Under a court order that's in this case, all of those individuals are to remain anonymous, and they are all assigned identifying numbers so that we don't have any risk of identifying them publicly. Do you understand that?

A. I do. I understand that.

Q. Okay. So when I ask you for a reference to any of the members of the team, you understand that I'm not asking for a name or any other identifying information, correct?

A. Yes.

Q. Have you been deposed before?

A. I don't recall. I don't think so, no.

Q. Okay. Well, I guess in light of that, let me just kind of explain a little bit. Basically I will ask some questions, and I'm just looking for information. It's hopefully information that you have. The only thing that I need you to do is just to simply answer truthfully. Do you understand that?

A. I do.

Q. Okay. You do understand that you are under oath at this point, right?

A. Yes.

Q. Okay. It's important that you actually understand the question that I ask, so if you don't understand the question, will you please ask me -- stop me?

A. Yes.

Q. Again, it's important to have clarity on that. So, please, if you could, wait until I finish the question before you start to answer so that in case there's any kind of uncertainty, we can clarify that and you can be absolutely crystal clear about what you're answering. Would you agree to that?

A. Yes.

Q. Okay. Now, when you respond, if you could, please use verbal responses rather than just a head nod or something like that.

A. Yes.

Q. Is that okay?

A. Yes.

Q. Okay. If you need to take a short break at any time, just let us know. I know that you just got done traveling to get here and that kind of thing, so if you need to take a break, just let us know.

Are you currently taking any medications --

A. Yes.

Q. -- that -- okay. Let me finish the whole questions here first. Are you currently taking any medications that are going to require you to take a break?

A. No.

Q. Are you taking any medications at all today?

A. Yes.

Q. Okay. Are you able to describe -- boy. I'm not sure what exactly the -- let me put it this way.

Is there anything about those medications that you're taking that would prohibit you or prevent you from being able to clearly understand and think and recall to answer my questions here today?

A. No.

Q. Okay. We'll just leave it at that.

Now, you're represented today here by Mr. Wille from the attorney general's office; is that right?

A. Yes.

Q. Okay. And have you done anything to prepare for this particular deposition?

A. No, I have not.

Q. Okay. Have you reviewed any documents to prepare for today?

A. No.

Q. Okay. And did you have a chance to meet and confer with Mr. Wille before you walked in the door here?

A. No.

Q. Okay. If you could for me -- at this point, I should put it on the record that we just became aware of your name a couple days ago. So by agreement with Mr. Wille, we are reserving the right to redepose you at a later time, if we need to. And we also just received some documents literally a day or so ago that we'll be talking about here and we would like to reserve the right to redepose once we have had a chance to thoroughly review everything and make sure we know what we're talking about.

A. Certainly.

MR. WILLE: That's okay with me.

Q. If you could, briefly just kind of explain what your particular occupation is.

A. I'm a pharmacist. I work primarily in prisons. I'm a pharmacy supervisor for one of the prisons. Since the State of Ohio Department of

Corrections only has two pharmacy supervisors, I'm one of those two people.

I handle a lot of questions and issues that come up within our pharmacies or surrounding pharmacy for corrections. So I end up, many times, dealing with that.

Q. Okay. So is it -- is there a central -- when you say the pharmacy and surrounding pharmacies, you know, is --

A. There are 30 some institutions. My primary role for the department of corrections is as a pharmacy supervisor at the Oakwood Correctional Facility, a psychiatric hospital, a prison hospital that also services a regular prison next door. So our role there is to dispense prescriptions on an ongoing basis, maintain accreditation and that sort of thing as both a hospital and as a prison. That's my primary role.

I sit on the state-wide P&T committee, and have for a number of years. I assist that committee in making formulary decisions and policy decisions and that sort of thing. Following our lawsuit, what we have is a MOC team, which you may or may not be familiar with, Medical Oversight Committee, that several years ago required that a number of our policies be rewritten, and I was handed that task for the pharmacy area for the state-wide correctional system.

So I'm fairly well versed in the state policies regarding pharmacies, since I have been asked to write those and revise those as the ongoing communication with our oversight team continues.

Q. Now, when you say in response to litigation, are you talking about this litigation?

A. No.

Q. Okay. Other --

A. Other litigation regarding the provision of healthcare services in prison.

Q. Okay. So have you been involved in any kind of discussions or rewrites, revisions, in response to or related to this case?

A. No, absolutely not.

Q. Okay. You mentioned the P&T committee. Excuse my ignorance, but I --

A. That's pharmacy and therapeutics. That term is a healthcare term. Most health organizations have that committee represented by physicians, pharmacists, sometimes nurses or nurse practitioners as well, with the primary function of that committee to look at policies and procedures regarding the provision of pharmacy services and the interrelation between the health disciplines and development of a formulary, a drug formulary and maintenance thereof.

Q. Okay. So is that something that's just within DRC, or is that just a --

A. That particular committee is within DRC and serves to establish such policy for DRC in Ohio. We also have an interdisciplinary P&T in Ohio that includes the department of mental health, the department of corrections. There are representatives from health and human services, the youth services. And I do serve as a representative to that committee on behalf of corrections as well for the interdisciplinary group.

Q. So you sit on the DRC pharmacy and therapeutics committee?

A. Correct.

Q. And you're also then the representative for all of DRC on the interdisciplinary P&T, I think you called it?

A. Yes, it is. I'm not the only DRC representative, but I am one of three.

Q. Okay. Who are the other two --

A. The other representatives?

Q. Yes.

A. Our clinical director for psychiatric services currently, I believe, is Doctor Bradley. He was just hired within the last week or two. That position had been vacant since Doctor Momaw vacated that. I believe it's Doctor Bradley. I don't know Doctor Bradley's first name.

The other individual has been Doctor Larry Mendal, although I'm not certain again with that, as their roles are changing within our department. It might be that Larry Mendal might continue to be that person, or it might be Doctor DeMairis. I believe John DeMairis is our medical director. And Larry is the assistant medical director. One or the other of those two would typically attend that meeting, along with me, quarterly.

Q. Okay. Let's back up a little bit. Can you just kind of give me information about -- what is your background?

A. I have been in pharmacy for a long time, since I was a child. At five, six years old, I have been working in drug stores with my father, who is a pharmacist educator. After moving to Ohio so that my dad could pursue his teaching career at a local pharmacy school, I graduated from high school and began my own pharmacy school career at Ohio Northern. I graduated from Northern in 1983.

I primarily have worked in the retail industry, some hospital, some long-term care. I worked in a hospital up until about a year ago part time, filling in for about a year with that particular stint. I've had a number of part-time jobs in addition to my full time for the last 20 years as a pharmacy supervisor for the department of mental health and then the department of corrections.

Q. Okay. So that's then concurrent, the department of mental health and the department of corrections for the entire 20 years, or --

A. Well, I began with my government service in 1990, January 1st of '90. At that time, the facility -- I didn't move facilities, but the ownership of the facility transferred from the department of mental health to the department of corrections in 1994. So my employment was then transferred from one department to the other.

Q. Okay.

A. I do still work with the department of mental health on an intermittent basis.

Q. Okay. What kind of association

memberships or anything -- any professional associations do you --

A. Right now, I have not -- in the last several years, since I have been more focused on government work and corrections, I no longer have kept up with my Ohio Pharmacist Association membership. I did up until a couples years ago. I did belong to the ASCP, the American Society of Consultant Pharmacists. Again, I haven't been continuing to use that, so I haven't maintained that membership. Likewise to the APHA, the American Pharmaceutical Association.

The one that I do continue with is the American Society of -- it's ASCHA. I'm on the national board for that. There are about a dozen of us that serve on that. It's the American Society for Correctional Healthcare Association.

Q. Okay. Now, I guess I'm a little confused. Is the pharmacy supervisor position your full-time job?

A. Uh-huh.

Q. And in that context, what are your responsibilities, your duties?

A. Primarily the supervision of the pharmacy at Oakwood Correctional Facility.

Q. Which means -- like what would --

A. Which means that the license for the facility there is in my name with the pharmacy board. I'm the responsible pharmacist for that cluster. I supervise the pharmacists and the technicians there, determine policy and protocol there. I'm responsible for ordering medication, seeing that there's adequate stock there, the timely dispensing of prescriptions, the accurate dispensing of prescriptions.

I'm responsible for the overall communication between my department and the doctors and nurses to insure that proper communication is there, interventions for prescriptions. When prescriptions require clarification or there's an issue with the prescription, the dosage might not be correct, there might be interactions with other medications, that sort of thing, all of that comes under my review.

Q. Is that just for Oakwood or is that --

A. That is my primary job, yes, is just for Oakwood.

Q. Okay. I guess I'm still trying to figure this out. You referenced like a part-time retail kind of stuff. What is that?

A. I do that on the side in my spare time. I work occasionally in drug stores for the department of mental health and their hospitals, for other hospitals, fill in work and that sort of thing.

Q. Okay. Now, you mentioned that there was two supervising pharmacists in the entire DRC; is that correct?

A. Yes.

Q. Is there one here at SOCF?

A. No, there is not.

Q. Is there one at OSP, or Ohio State Penitentiary?

A. No, there is not.

Q. Do you know where the other supervising pharmacist is?

A. The other one supervises the Pickaway complex. The terminology of pharmacy supervisor would mean that it's a -- it's a busy enough complex that would require multiple pharmacists to be employed there. When that is the case, one of those pharmacists is the pharmacy supervisor over the others. We only have two of those locations in the state.

But by nature of that position, being an exempt -- a bargaining unit exempt position, then those two people that fill those jobs end up responding to the issues that come up within our overall system. We are the ones that are asked for input. We are the ones that are asked -- when there's an issue or a problem someplace, we're asked how we are going to resolve that, for our input regarding that so that our central office can make informed decisions about what we are going to do with pharmacy.

Q. Okay. So if something were to come up here at SOCF, how does that work? Who is the supervising pharmacist for this facility?

A. What's happened in the last year or so at this institution is that there is no longer an on-site pharmacy. There had been previously. It's now sort of a mail order operation from here. It is done through the department of mental health that provides the mail order prescriptions.

The person in charge at the department of mental health for this facet of their operation is Denise Dean. Denise is her middle name. I think it's Mary Denise Dean who has the overall responsibility. She has a number of -- eight or ten or a dozen pharmacists that work for her at the location of the department of mental health that provide medications for this institution and half a dozen or more others throughout the state. Not all of them have pharmacies. Many of them do this instead.

Q. And would that also apply that she would be the one overseeing it when we're talking about ordering drugs for the execution process?

A. I don't know.

Q. That's not something that you are overseeing?

A. No. I do recall that when there was a pharmacy on site, that that pharmacy on site did take care of that. I don't know what happened when the change was made to terminate the contract here with the pharmacist and to go with the department of mental health. I don't know if they use a local hospital, a drug store or if they are using the department of mental health. That never occurred to me to even ask.

Q. Okay. So that's not anything that comes across your desk?

A. It is not.

Q. And it's not anything that comes across the desk of the other pharmacy supervisor?

A. That I'm aware of, it is not.

Q. Okay. What's your licensure situation?
A. I'm considered right now active pending because we're in the process of renewal right now. Our licenses are good through September 15th of each year. This happened to be a year that I needed to report continuing education, which I did, earlier this year. Then after that was successful with the pharmacy board, then they mail out a renewal application to the people that -- once your CE has been certified by the board.
Q. Okay. Your CE being your continuing education credits?
A. Continuing education credits, yes.
Q. And how many credits do you have to get in a -- is it a two-year period, a one-year period?
A. It's a three-year period.
Q. Okay.
A. I think it's 90 now. It's either 60 or 90. I don't recall. I get so many, and I did them in April or May, earlier this year.
Q. And how do you -- like what kind of stuff are we talking about for that for you specifically? What do you do?
A. A lot of what I did was through the Correctional Health Services Association. There was

a long seminar in Chattanooga, Tennessee and another one in Orlando, both of which I was at and participated in. A lot of it is online. A lot of it is different seminars that you attend and that sort of thing.

Q. Any of the training sessions that you had, the continuing education, are any of those related to or about anything related to the execution process?

A. I would say not directly related. Although some of the medications might have been discussed in some of the different courses that I went through. But not in -- not referencing lethal injection or the execution process.

Q. So when you say --

A. I have never seen a continuing education course that's so related.

Q. Okay. So when you say some of the drugs might have come up, help me understand that a little bit.

A. Well, for instance, if there's a new medication that's going to come out on the market, many times some of the older medications that are on the market currently will be compared and contrasted with that medication, as the continuing education course is attempting to place that medication in terms of its usefulness and such within a formulary sense. So if there's a new neuromuscular blocking drug that's going to hit the market, you would see that compared and contrasted with some of the existing drugs.

What I try to keep up on are most of the drugs that are pertinent for my primary practice, which are antipsychotic drugs, antidepressants, the psychiatric practice of the pharmacy at the institution at Oakwood. We also get a lot of HIV, hepatitis, that sort of thing. So I try to keep up to date with what's available, how those medications in particular are used and so on.

Q. Okay. When you reference neuromuscular blocking agents, I think you called it, what would that be -- what are you referring to when you say that?

A. I guess I don't understand.

Q. Well, I mean, are we talking about a neuromuscular blocking agent in the execution process? If so, what are we talking about with that?

A. There is one that's used in the execution process, which would be the pancuronium, the second drug that's used.

Q. Okay. So you're saying that there's been instances where you have learned of new and different drugs that would replace the pancuronium?

A. I'm not saying that. I'm saying -- I can't even site a specific off the top of my head, but I believe that some of the continuing education that I have seen in the last three years, up until this reporting period, has made mention of some of the different neuromuscular blocking agents. I can't say specifically whether -- you know, which drugs they were, et cetera. I really don't recall.

Q. Okay.

A. But I have not -- I guess in direct answer to your earlier question, I haven't had any specific continuing education on either the lethal injection process or the execution process or the medications used in that. Nothing specific for that, although perhaps some of the medications have been mentioned in other ones that I have been in.

Q. Okay. Let's talk a little bit about -- since you mentioned it, let's talk a little bit about the drugs that we're talking about here.

A. Okay.

Q. What is your understanding of the drugs that are involved in Ohio's lethal injection protocol currently?

A. In terms of?

Q. What we're talking about, what they do, what kind of volume we're -- I mean, what's your understanding, I guess, of -- well, we haven't introduced it yet, but --

A. The protocol?

Q. Right. We may as well introduce this as this point. This is Exhibit 12-A, which Mr. Wille has there.

A. Okay.

Q. Exhibit 12-A, do you recognize that document?

A. Yes.

Q. And what is it?

A. It's the execution protocol.

Q. Okay. Have you seen this document before?

A. Yes, I have.

Q. And is this the currently operative execution protocol?

A. As far as I know, it is, yes. I don't think anything has come out since May 14th.

Q. Okay. So this completely supersedes the October 11th, 2006 protocol?

A. That would be my understanding, yes.
Q. Okay. When did you actually become involved with the execution process?
A. I was asked in May -- I don't know the specific day, but May of this year -- to prepare some information about the medications used in the execution process in order to provide some training for the execution team. That's --
Q. Who asked you to do that?
A. It was Greg Trout. I received an e-mail from Greg Trout.
Q. And he is --
A. He is counsel for DRC.
Q. Okay. What would -- let me start over.
What was your specific assignment that Mr. Trout asked you to do? You said to do some training and some explanation. That's a pretty broad --
A. It is. I don't have a copy of that e-mail. I suppose I could paraphrase. I think I wasn't entirely understanding exactly what it was that he wanted at that time. I think there was a little back and forth. Again, I'm paraphrasing. It was some of the characteristics of the drugs that are used, the dosages that are used, what some of

the affects of the drugs, some of the side effects of the drugs and I think the duration of the action of the drugs at the doses that would be in the protocol. I don't remember what else.

Q. Okay.

A. I think that pretty much was the substance of it.

Q. Okay. How much time did you have to put this thing together from when he contacted you until whatever came next, I guess?

A. I would say, you know, a couple of weeks, a week or two maybe. I think that the day I was here was the 18th of May. I think it was at least a couple of weeks before that. I couldn't -- I don't know exactly, but that's my remembrance, that it was a couple of weeks.

Q. Okay. And what did you do in response to that request?

A. Well, the first part was trying to find a day that I could do that, so checking my schedule and making that arrangement. That was the most difficult part.

The next part was to try to find a copy of an up-to-date protocol. I think that this wasn't in -- well, this was the 14th, and I was trying to put something together prior to the 14th. I believe I was able to get my hands on this about a week before the -- so about the 10th or the 11th, something like that, I was able to track this down.

I pulled some reference books, looked up some material in those reference books, did some online searching and made some notes.

Q. Okay. Did Mr. Trout actually provide you the protocol?

A. He did not.

Q. Do you remember where you got it from?

A. I think it was online.

Q. Okay.

A. It was online within our intranet. It was available there.

Q. Okay. So as you put together whatever it was that you were going to do, you said you consulted the internet and --

A. Some different references, drug references.

Q. In order to do what?

A. In order to have a comprehensive understanding, I guess, or just to refresh my memory, look up what it was that Mr. Trout had wanted to be part of the education for the team.

Q. Okay. And were you familiar before that point with what was involved with Ohio's execution -- lethal injection execution?

A. I knew that it was a three-drug regimen and I knew roughly what the drugs were. I didn't know what the doses were.

Q. Okay.

A. I was somewhat familiar with it, but not in detail. I had never read the execution protocol before.

Q. Okay. And did you actually read the protocol before or during the time that you were preparing the --

A. I did.

Q. Okay. And was that -- was any materials that you produced based on anything in the protocol?

A. Yes. I think I had a copy of the protocol when I was speaking.

Q. When you were speaking or when you were preparing stuff?

A. Both. But I brought it with me and then, you know, went through it, as did Mr. Trout, I believe. He kind of went through it kind of page by page.

Q. When you say Mr. Trout went through it --

A. As well.
Q. -- you mean when you were here?
A. When I was here with the team spending -- I don't remember how long it was, an hour or so, an hour or two, maybe a little more than that. Then Mr. Trout had a separate time from that that he was going through this material with the team as well. Since it was a brand new protocol, he wanted to make sure everybody was up to date with it.
Q. In your understanding, were you just focusing on the actual drugs themselves?
A. Yes.
Q. Okay. So that's the full extent of whatever presentation you gave?
A. Yes.
Q. And what kind of stuff did you talk about in that presentation?
A. I talked about the lethal injection process, the history of it, how it evolved, where it began, how it evolved from where it was to where it is, the different doses that are used in different states.
I talked about how some of the drugs are used in euthanasia and assisted suicide, that sort of thing. Then I went in individually to each of

the drugs and went through the pharmacology of the drug with the team.

Q. Okay. Did you prepare any materials to use for that?

A. I did.

Q. And what would that consist of?

A. Maybe a dozen pages or so of notes from different sources.

Q. If I could direct your attention to what's been marked as Exhibit 72. Mr. Wille has a copy of it that he'll show you there.

A. Okay.

Q. Do you recognize the first page there?

A. Yes.

Q. And what is it?

A. It's a training session report.

Q. And is that -- is that the training session report for the training session that you were talking about that you conducted?

A. I don't think so, no. It is not.

Q. Can you take a couple minutes and just kind of review the contents of Exhibit 72?

A. Uh-huh.

Q. Just see if your notes are in this document.

A. They are not, no.
Q. They are not?
A. No.
Q. Do you have a copy of those notes?
A. I don't have one with me, no.
Q. Do they still exist?
A. I believe so, yeah. I probably have one on my desk at home.
Q. Okay.
MR. WILLE: Let me state for the record that whatever exists will be provided. I was not aware that -- I was not aware fully as to exactly how much written material was prepared by this witness ahead of time. I will make sure that you obtain copies of anything that exists.
MR. BOHNERT: Okay.
A. This is not the training that I did, and these aren't my notes.
Q. So you didn't prepare any of the stuff that's in this document?
A. No.
Q. Do you have any idea who did?
A. No, I couldn't say.
Q. Okay. Let me refer you to Page 41. It's the next to the last page.

A. Okay.
Q. Do you recognize that particular page?
A. I've seen a page like this before. Again, I don't recognize this one.
Q. Okay. As you look at this particular page, what does that appear to be?
A. It looks as though individuals are signing that they have received this policy. That does have my name on it and the date -- that is the date that I did put together a -- put together my presentation.
Q. Okay.
A. So this could very well be a record of that.
Q. Okay.
A. But none of this material -- now wait a minute. This last couple of pages -- some of this is mine. I'll have to backtrack from what I said earlier, because these last few pages were part of the material that I did present, from 33 to the back.
Q. To the back, you mean to --
A. Well, 33 through 40.
Q. Okay.
A. That is part of it.

Q. And that --
A. I apologize that I didn't look through that a little more closely.
Q. So is this, from Page 33 to Page --
A. Well, to the end, I guess.
Q. -- 40, is that the full extent of the materials that you presented?
A. No, it isn't.
Q. So there's still other document somewhere?
A. Yes.
Q. Okay.
A. This is part of it.
Q. This particular section of pages, from 33 to 40 in Exhibit 72, was this used as a handout --
A. No.
Q. -- of any sort or anything like that?
A. No, it wasn't. No, it wasn't distributed.
Q. Was there anything distributed to the attendees?
A. Not by me, no.
Q. Did you provide any notes or anything like this to Mr. Trout or anybody?
A. I must have, because here it is.
Q. Okay.
A. I don't recall it, I really don't. But

this was part of the material, and there were more pages than this.

Q. So this particular document here that we received from Mr. Wille, he did not receive from you? Is that what I'm understanding?

A. Correct.

Q. Okay. There's a fairly extensive list of footnotes there and sources and that kind of thing on Page 39 continuing on to 40.

A. Yes.

Q. Is this something that was compiled -- I mean, did you compile everything in here from scratch?

A. Not everything, no. There were things that were already put together that I was able to locate difference places in the week or so that I had to put it together.

Q. And do you know where you got those documents from?

A. It had to be online, the earlier part of this anyway. I also had some references from, again, some of my textbooks, pharmacology textbooks and facts and comparisons. I used the online version of that.

Q. Okay.

A. Could have been a Gilman pharmacology reference and then some online stuff.

Q. Okay. As you recall, how did the training session that you ran on May 18th -- how did that -- you know, what happened with that?

A. Well, I tried, when I first started, to take questions, but there weren't a whole lot of questions at first. There were more as it went on, questions about -- I don't know if the machinery is listed in here or not that they use in other states.

Q. By "machinery," what do you mean?

A. There are a few states that have -- let me see if it's in this part of it. Here it is on Page 36. In four states, Delaware, Illinois, Missouri and New Jersey, there's a lethal medicine used, et cetera. There were some questions about that. I didn't have a whole lot of knowledge about it, but there were some people present there that did have some knowledge about that, so there was some discussion about that.

There were several questions about whether or not I could -- if I could affirmatively say whether or not people were experiencing one thing or another while they were -- I'm talking about inmates during the execution process. That wasn't the focus of my presentation. It was more about the medications than about what a person might or might not be able to feel and experience during that process. But I did -- like I said, I entertained not so many questions at the beginning, but more and more as the presentation continued on.

Q. What were those kind of questions as far as what the inmate could feel or whatever? I mean, what kind of questions are we talking about?

A. You know, other than what I said, I don't know what -- like the specifics.

Q. Okay. You said the focus of your presentation was the medications. Can you explain to me a little bit of your understanding of what the medications are that are involved in Ohio's lethal injection protocol?

A. Well, the first medication, the barbiturate, is essentially an anesthetic, a general anesthetic, used for that purpose.

The second drug, a neuromuscular blocking agent that is essentially used as a paralytic agent.

Then the third drug, potassium electrolyte, is essentially used in our case to stop the heart muscle.

Q. And in your understanding of these drugs,

are they painful?
A. In and of themselves, that is possible. Used in the fashion that has been described here, I don't believe that they would be, no.
Q. Okay.
A. Potassium would be painful in and of itself, but not --
Q. In reference to what the protocol calls for, and in looking through here, what you -- you know, your notes or whatever you want to call these, and I'm not quite sure if they are notes or what. But the documents here from Page 33 to Page 40, --
A. Yes.
Q. -- what is your understanding of what the first drug is and what kind of quantities are we talking about in the protocol for Ohio and that kind of thing?
A. Okay. Well, the drug is an anesthetic, a barbiturate anesthetic. Our quantities --
Q. What's the name, the specific name?
A. Pentothal, Sodium Pentothal.
Q. Okay.
A. The quantity is a two-gram dose, although our protocol requires the preparation of four grams. Half of that is a backup. So it would be a two-gram

dose --
Q. Okay.
A. -- by IV.
Q. If I could, I'll have you take a quick look at Page 37 of the materials here.
A. Yes.
Q. Could you read the -- it says medications, correct?
A. Yes.
Q. And it says sodium thiopental, correct?
A. Yes.
Q. So we're talking about the first drug, right?
A. Yes.
Q. Can you read that next line, the bulleted line?
A. "Lethal injection dosage, two to five grams. Ohio protocol, four grams."
Q. Is that particular information based on your understanding of the protocol?
A. That was prepared in advance of the actual presentation. What I learned just at that moment was that the four grams is not a one dose. That is -- again, that's divided in to two grams with a backup of two grams.

Q. Okay.

A. So my understanding in looking at the protocol, the Ohio protocol, was that it was a four-gram dose. But I learned that it's not a four-gram dose, it's actually a two-gram dose.

Q. Okay. When did you learn that?

A. That morning, on the 18th.

Q. So when you arrived here?

A. Yes.

Q. And how did that come up?

A. As I was going through this material, my supposition was that we were giving a four-gram single dose, and I was corrected.

Q. Okay. So during the actual session you were corrected?

A. Yes.

Q. Do you remember who it was who corrected you?

A. I believe it was Mr. Trout.

Q. Okay.

A. I couldn't swear to it, but I believe it was Mr. Trout.

Q. Okay. So the attendees heard your version of it first and then he spoke up audibly or how did that --

A. Oh, absolutely, yes. I'm pretty sure it was Greg who told me. He said four grams is -- I couldn't swear to it, but I believe it was Greg that said that the four grams is really -- that it's a two-gram dose and then if there's an issue, then there's an additional two grams that can be used.

Q. Okay. The second drug then that we're talking about is what?

A. Pancuronium bromide.

Q. And what kind of volume are we talking about for that?

A. A 100 milligram dose.

Q. And does that -- how is that administered?

A. IV.

Q. Well, as far as -- you know, we have got the two doses of the sodium thiopental, right?

A. Yes.

Q. How does -- do you know how the pancuronium bromide is administered?

A. How?

Q. Well, I'm saying --

A. I guess I don't understand the question.

Q. Is it all one shot? Are we talking multiple injections, multiple syringes? Are you familiar with --

A. I believe it's all -- it's over -- I'd have to look in the protocol to see for sure what they have got in there. It would be just over a few seconds, I would think. It appears to be just a single shot.

Q. Okay. In your understanding of the drugs here -- well, let me stop. The third drug that we're talking about is what?

A. Potassium chloride.

Q. And that particular drug function is to do what?

A. For our purposes, to stop the heart.

Q. Okay. And the second drug, the pancuronium bromide, the function for that drug is what?

A. Paralysis of skeletal muscle.

Q. Okay. With the third drug, what kind of dosage are we talking about?

A. 100 milliequivalents.

Q. Okay. Going back to the first drug for a moment, how long, in your view, does that first drug last? How long is it going -- at the two-gram dosage.

A. It would be expected to last around 40 hours, I would say.

Q. At full -- the same strength of effect for all 40 hours?

A. I would say around the 40 hour mark, based on the half-life of the drug and the weight of the patient, et cetera, inmate, condemned, it would be in the neighborhood of 40 hours, I would say, between 36 and 40 hours depending, again, on the particulars of the person.

Q. You mean the half-life would be 40 hours?

A. No. What I'm saying is that around that point, the concentration of the drug would get down to the point where you may not -- you probably will not have general anesthesia any more.

Q. Okay. And is that something that's dependent on the particular individual?

A. It is.

Q. And how would you adjust that, and what factors are we looking at to adjust?

A. I don't think there are any to adjust. I think it's just a two-gram dose for us.

Q. So there's no --

A. It's not weight based. It's a two-gram dose.

Q. Regardless?

A. Regardless.

Q. Okay. What, in your view, is going to be the effect of a two-gram dose?

A. General anesthesia.

Q. And by general anesthesia, what do you mean?

A. I mean lack of sensation.

Q. Okay. Are you saying that if you give a two-gram dose, left alone and nothing else happens, that inmate is unconscious in general unconsciousness --

A. In ten to 12 seconds.

Q. So it's not 40 hours?

A. In ten to 12 seconds.

Q. In ten to 12 seconds. Okay. But then how long would that last?

A. For 40 hours.

Q. At that same level of unconsciousness?

A. At which same level?

Q. Well, whatever -- I guess that's my next question. Maybe I'm being premature. Are there levels of consciousness in your understanding of --

A. Levels of consciousness? Or levels of unconsciousness?

Q. Well, yeah, I guess that would be better.

In your understanding, are there levels of unconsciousness? Let me say that.

A. I would expect that, yes, depending on the concentration of the drug. It would need a certain concentration in order to be effective for -- to stop sensation, yes.

Q. Okay.

A. That's why I would say 40 hours. It's going to take that long before people are going to be able to begin to become conscious after a two-gram dose.

Q. Is a two-gram dose what would be sufficient to put a particular individual -- a generic individual, let's say, to a surgical plane of anesthesia?

A. Oh, more than. Oh, absolutely.

Q. More than what?

A. More than what you would need to get to a surgical plane of anesthesia.

Q. Two grams?

A. Way more, yes.

Q. And just to make sure I'm understanding, you're saying that that surgical plane of anesthesia that you're saying is established, that depth of unconsciousness would last from 36 to 40 hours?

A. Yes.

Q. Okay.
A. Again, depending on the individual characteristics.
Q. Right. I guess that's what I was trying to formulate, you know, what the next question would be.
A. Yes.
Q. When we're talking about, say, in a larger individual than your typical individual, --
A. Sure.
Q. -- how does that affect what we're talking about as far as the depth of unconsciousness resulting -- you know, producing --
A. With a larger volume up distribution of the drug, therefore you would expect an overall shorter duration.
Q. And by that, what kind of shortening are we talking about?
A. What kind of?
Q. Well, I mean --
A. That wouldn't be the only, I guess, variable. I would think that also tolerance to that drug and metabolic activity of the individual would also effect that, perhaps as much or more than their size and weight. It's a weight-based drug, so you

would -- in the event that you were attempting to individualize the dose, you would give more or less depending on what the weight would be.

Q. Okay. So would it be fair to say that the level of unconsciousness for a man who weighs 400 pounds and who has a high metabolic rate, who maybe has some tolerance to barbiturates or sedatives in some respect, that the level needed to anesthetize that person would be a much higher amount than the amount needed to anesthetize somebody who is a buck fifty and just a normal size?

A. I don't think the blood level would be any different. But in order to attain that blood level, it might require a higher does.

Q. Okay. So a different volume of the sodium thiopental being injected?

A. Yes.

Q. Okay. The second drug, is that, likewise, something that's going to be effected individually?

A. Not so much.

Q. Why is that?

A. The dose is just so significant for this drug. It is a weight-based drug as well, but it just -- you just don't have the metabolic complications. It doesn't redistribute the way that the barbiturate does as quickly. It just not as significant.

Q. Okay. If the individual is not properly sedated under the first drug, would you agree that the second drug is going to be extremely painful?

A. No, I would not.

Q. How would you describe the effects of that second drug if the person were not properly anesthetized?

A. I don't know that they would feel that drug. That wouldn't be a caustic drug. I don't think that -- I wouldn't expect any -- any -- I don't know how to put it. I wouldn't expect any pain level from the drug, certainly. Is that kind of what you were getting at?

Q. Yes. Well, let me back up. What kind of muscles -- you said it's a neuromuscular blocker, I think, was the term you used.

A. Right.

Q. What muscle groups are we talking about that are going to be affected by that?

A. Well, it's going to start with the smaller muscles, then from there move to the larger muscles, so fingers and toes and that sort of thing, then eventually to the intercostal muscles, breathing.

Q. Okay. How long does that typically take?
A. I would -- in this case with this type of dose and what we're doing, I would say 30 to 40 seconds maybe.
Q. From the start, from feeling tingling in the fingers, to central --
A. I think -- do you mean entire paralysis, how long that would take?
Q. Yes.
A. I would think certainly within a minute.
Q. Okay. And one of the muscle groups would be the muscle groups involved in respiration; is that correct?
A. Yes.
Q. Okay. As far as the third drug, again, if we don't have a proper level of -- if the inmate is not completely anesthetized, when we inject the third drug, what's the result there?
A. The result?
Q. Is that going to be painful?
A. It would be painful, yeah. If you were not anesthetized, it would be painful. There would be burning certainly along the injection site. That would be most of the pain, probably pain associated with that at the injection site and along those

blood vessels from there to the heart.
Q. Okay. Back to the second drug for a moment, if I may?
A. Uh-huh.
Q. Are you saying that if the person were conscious, as the respiration process ceases, that that would not be painful?
A. I don't know.
Q. Okay. When you did your instruction to the execution team, what kind of information were you actually conveying? Is it all just in here?
A. This plus some other -- some other pharmacology information. This is really most of it, but there was some other material from another couple of sources. I don't remember if I really went through it or if I had that available as notes for when people asked questions about any of the drugs.
Q. Okay. So the information that you conveyed to the team would have been the same information you're telling us today, your understanding of the drugs; is that correct?
A. Yes.
Q. Okay. Do you know who else was involved in educating the team members regarding the specific

drugs and the affects?
A. I don't.
Q. Do you know if they have had any other training?
A. I don't.
Q. Okay. And the training that you did was just on the drugs and their affects that are being used, right?
A. Yes.
Q. Okay. Do you know, is there a prescription required to obtain the drugs for each individual execution?
A. I believe it's a court order rather than a prescription.
Q. Okay.
A. So that would take the place of the prescription, --
Q. And is there --
A. -- I believe. But since I don't fill those, I couldn't know for sure. But that's my understanding.
Q. But you don't know who does fill those prescriptions?
A. I don't. No, I don't.
Q. Is that -- so you don't even know if it's

somebody within DRC?
A. I don't think that it is, but that's just my own guess on that. I think I would know about it if it was.
Q. Okay. And do you know, is that something that would have to be specific for each execution?
A. I would assume so.
Q. Okay. But, again, all the dosages and concentrations and everything are all identical for each execution, correct?
A. That's the protocol, yes.
Q. Okay. Were you, in your capacity -- after Mr. Trout contacted you, were you paid in any way to do the training?
A. Not other than my normal -- I wasn't paid extra to do this. I was just -- instead of working that day at my normal facility, I came down here instead.
Q. Okay. So they didn't pay you like a consultant fee --
A. No.
Q. -- or anything outside of your --
A. No.
Q. Okay. Do you know what the arrangements are -- have you been asked to do additional training

at all?

A. No, I haven't.

MR. BOHNERT: Give me just one second.

MR. WILLE: Sure.

(Off the record.)

Q. (By Mr. Bohnert) Just a couple of things here. The first is just kind of a procedural thing. Would it be possible for you to provide us with a copy of your CV?

A. Yes.

Q. Okay. You can provide it to Chuck and --

MR. WILLE: We can do that.

A. Sure.

Q. In your role as the pharmacy supervisor with DRC and sitting on the P&T, the pharmacy and therapeutics board, or in any other role, were you ever consulted or involved in any way with the development of the drugs themselves, the dosages, the administration of or anything in the protocol?

A. No.

Q. Have you -- did you know that there was this stuff in the protocol?

A. Not until a few days before this -- a week or two before the presentation, no, I did not.

Q. Okay. Have you ever witnessed an

execution?

A. No, I have not.

MR. BOHNERT: I don't have any more questions, but I believe that Randall does.

MR. PORTER: I just have a few questions.

EXAMINATION

By Mr. Porter:

Q. My name is Randall Porter. You probably don't remember my name.

The first is, are you aware of what impact it has upon people to be locked in a room without air conditioning in southeastern Ohio for six hours?

A. Absolutely. It's cruel and unusual.

Q. If I understood your testimony correctly, and I certainly don't want to put words in your mouth, you were asked by Mr. Trout to speak?

A. Yes.

Q. Did he give you a reason that they were doing the training in -- at that particular time?

A. He did.

Q. And could you share that with us, please?

A. He told me that as part of a ruling -- I don't remember the specifics, but a ruling by a judge, and I believe it was a federal judge, that some training -- that it was determined that some training needed to be provided on the medications used in the lethal injection process for the execution team. He asked me if I was willing and able to do that for him.

Q. And the training session, or at least the part you participated in, was in the morning?

A. It was.

Q. And was that here at this facility?

A. Yes.

Q. And can you just -- I get stuck in logistics at times, so you need to be a bit patient with me.

A. It's okay.

Q. Can you just describe the room?

A. It was the room through that doorway, that room in there.

Q. Could you describe that? Somebody might want to know what that looks like, and just by saying it's another room, that's not going to help.

A. It's a room about twice the size of this one. I think similar in width, but about twice as long. That day tables were set up in two long rows with a podium at one end.

Q. And were you -- to the best of your knowledge, were you the first presenter that day?

A. Yes.
Q. Did somebody introduce you?
A. Yes.
Q. And that would be?
A. I don't remember if it was the warden or if it was Greg Trout. It was one of the two. They were both speaking before I did.
Q. Can you give us an estimate of how many people were present that day?
A. Twenty something.
Q. At some time during your presentation, were you introduced to all the people?
A. No.
Q. This is Mr. Wille seated next to you. Was he there?
A. I don't recall seeing him there, no.
Q. And your presentation lasted about how long?
A. More than an hour, less than two.
Q. And am I correct that you were either seated or standing at the podium?
A. Standing.
Q. Did people, from your perspective, appear to be paying attention?
A. Yes.

Q. Can't remember anybody sleeping or anything like that?
A. I didn't see anybody sleeping.
Q. And, please, I wasn't trying to remark on your speaking.
A. That's all right. It's happened to me before.
Q. Did you attend the entire training session or just your portion?
A. I left after my portion.
Q. Did you -- did anyone ask you any questions that you didn't have answers for and you had to call them back later on?
A. No.
Q. When Mr. Trout called you initially, did he tell you why he asked you in particular as opposed to maybe someone that had drafted the original protocol to speak about the drugs?
A. No, he didn't.
Q. And if I understand your remarks, you did not have any written material that you gave to the class of approximately 20?
A. Right. Correct.
Q. And just -- I know I'm being a tad repetitious, and I apologize, but it sounded like

you got a fair amount of questions; is that correct?
A. I think so, yes.
MR. PORTER: I don't have anything additional.
MR. BOHNERT: Just one real quick.

RE-EXAMINATION

By Mr. Bohnert:
Q. Is this session that you conducted the first one that you have done here at OS -- SOCF?
A. Yes.
Q. That's the only time that you have ever done that?
A. I have been to this facility before, but not for anything related to an execution or training or that sort of thing.
Q. Okay. So have you done any kind of training program related to specifically the lethal injection --
A. No.
Q. -- or any other circumstances?
A. No, I have not.
Q. Okay.
A. I was here -- the training I did was for the pharmacy staff here on how to use the computer software that we were implementing.

Q. Okay.

A. The previous couple of times that I had been here was to put that in for them, install that and train them in its use.

MR. BOHNERT: I have nothing further.

Mr. Wille may have some questions for you.

MR. WILLE: Just a few questions.

EXAMINATION

By Mr. Wille:

Q. Sir, going back to what your understanding was before you did the training, did you know who the audience was going to be that you were making the presentation to?

A. Yes, I did.

Q. Would it be fair to say that your purpose was to give some, if you will, general information about the affects of the drugs in the protocol?

A. Yes.

Q. And by affects, I mean whether they might produce pain?

A. Not so much as the pharmacology of the drugs.

Q. At some point, I take it you did discuss the aspect of whether the drugs could cause pain though?

A. Yes.

Q. You used a term I thought was interesting. You talked about a drug causing pain because it's caustic when you administer it.

A. Uh-huh.

Q. Do you remember saying that?

A. I do.

Q. And I take it that you told the -- you told the people you were talking to that the third drug could cause pain because it's caustic. Is that fair to say?

A. Yes.

Q. I mean, caustic in the sense that the actual injection of the drug itself as it went through the veins could cause a burning pain?

A. Yes.

Q. Did anybody -- do you recall, did anybody in the audience express any -- have any questions about that that you remember?

A. Yes. They wanted to know if it would be expected that they could feel pain after having had the first drugs administered.

Q. And what was your answer to that?

A. That I didn't believe that would be possible.

Q. As a pharmacist, are you familiar with, say, the general dosage that a drug would be used for therapeutic purposes?

A. Yes.

Q. And you're aware, of course, of the dosage levels that are set forth in the protocol, correct?

A. Yes.

Q. In your experience, would a two-gram dosage of sodium thiopental be normally used for therapeutic purposes?

A. No. It's about seven times the normal dose.

Q. How about the second drug? Would the dosage level for that drug normally be used for therapeutic purposes?

A. No, it wouldn't. It's the same story and about the same overdose, six to seven times overdose.

Q. And the third drug, the same thing?

A. Absolutely. Even more so, probably ten times.

Q. Has it ever been your experience that any physician has ever prescribed those levels -- that dosage level of drugs?

A. No.

Q. You're not saying it's impossible, but just not to your experience?

A. Not to my experience.

Q. Now, you were asked some questions about whether the second drug was painful. Clarify this for me. The second drug in the dosage it's given would paralyze a person's ability to breathe, right?

A. Yes.

Q. Would a person suffer severe -- could a person suffer severe discomfort assuming that they were otherwise conscious, that they could not breathe?

A. Yes.

Q. So I suppose that if we define pain to include the severe distress that one might have with one suffocating, then that drug would be painful?

A. In and of itself, given that drug by itself without first being under anesthesia, yes, correct.

Q. Do you know whether that subject came up, or did you discuss that particular aspect of the drug during your presentation?

A. I don't recall whether -- I don't believe it did come up.

Q. Are you satisfied -- in terms of the

questions you received, are you satisfied that the people you addressed were aware of the general purposes of these drugs?

A. Yes.

Q. And are you satisfied that they were aware that -- of the importance that the first drug would render the inmate unconscious?

A. Yes. Very much so, yes.

MR. WILLE: Thank you. I have no further questions.

MR. BOHNERT: Just real quick here.

FURTHER RE-EXAMINATION

By Mr. Bohnert:

Q. It looks like the notes that you prepared here for your presentation were all predicated on this understanding that it was a four-gram dose of the sodium thiopental; is that correct?

A. Yes.

Q. Okay. So did you just alter things on the fly then as far as not only the dosage but the amounts?

A. Yes, I did.

Q. And is that information based on -- I mean --

A. On the half-life of the drug.

Q. Okay. So you just took everything and chopped it in half as far as what you presented to the --

A. You would remove the half-life from the drug. You wouldn't cut it in -- for instance, on Page 37, it states that the half-life of this drug is 11 and a half hours, et cetera. Then below that where it says after a four-gram dose, consciousness will be regained in about four half-lives, which occurs in 50 to 60 hours.

So with a two-gram dose, it would be about 11 hours less than that, 11 to 12 hours less than that. You wouldn't cut that in half and say that it would be 25 to 30 hours. You would say that it would be, as I said earlier, 30 something to 40 something, 50 something.

Q. Okay.

A. I would say a minimum of 36 hours.

Q. Given a normal individual, a normal body type size, everything normal, how much, volumewise, are we talking about for a lethal doze just with the sodium thiopental?

A. Of about what size?

Q. Well, just a normal person.

A. Normal size?

Q. We're not throwing in here the variables with a large person or metabolic rates or anything like that.

A. A two-gram dose would probably be lethal.

Q. Probably be lethal?

A. It would probably be lethal for a normal-size person.

Q. How much would you need to be definitively lethal?

A. Definitively lethal? Again, it would depend on the specifics of that individual. With a 200-pound person, if you had a one-drug protocol, it would probably be about a two-gram dose for about a 200-pound person.

Q. Okay.

A. That would be considered -- that would probably be a lethal dose. Definitely a lethal dose? You know, I don't know that is such a thing as a definitely lethal dose for that.

Q. So how long then are we talking about from injection to death?

A. Again, that would take a long time. It wouldn't certainly be minutes. My estimation -- again, this is so individualized. Depending on the individual circumstances, it could be -- you know, it could be 24 hours, it could be more, could be less.

Q. Okay. And if we doubled the size of the dose to a four-gram dose, what does that do as far as time for death?

A. As far as the lethality?

Q. Yes.

A. I would expect it to shorten.

Q. To approximately --

A. I really couldn't say.

MR. BOHNERT: I guess that's all.

MR. PORTER: No more questions.

MR. WILLE: Nothing else for me.

Thank you.

MR. BOHNERT: Can we agree to the usual stipulations that we did for the other two?

MR. WILLE: We will, yeah.

- - -

Thereupon, at 3:58 p.m., Thursday, August 13, 2009, the deposition was completed.

- - -

CERTIFICATE

STATE OF OHIO :
: SS:
COUNTY OF SCIOTO :

I, Diana L. Hodge, a notary public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named Richard Theodore was by me first duly sworn to testify to tell the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the deposition then given by him was by me reduced to stenotype in the presence of said witness, afterward transcribed by computer; that the foregoing is a true and correct transcript of the deposition so given by him; that the deposition was taken at the time and place in the caption specified and was completed without adjournment; and that I am in no way related to or employed by an attorney or party hereto, or financially interested in the outcome of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office in Wheelersburg, Ohio on this 20th day of August, 2009.

My commission expires
June 20, 2012

Diana L Hodge
DIANA L. HODGE, NOTARY PUBLIC
IN AND FOR THE STATE OF OHIO